

PTO/SB/31 (04-05)

Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**NOTICE OF APPEAL FROM THE EXAMINER TO  
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

PH41

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] December 14, 2005  
on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed  
name

Mark Bourgeois

In re Application of

White

Application Number

09/939,491

Filed

08/24/2001

For

Clematis Avalanche

Art Unit

1661

Examiner

McCormick

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1))

\$ \_\_\_\_\_

- ☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:

\$ 90

- ☐ A check in the amount of the fee is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.

- ☒ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

- ☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. \_\_\_\_\_. I have enclosed a duplicate copy of this sheet.

- ☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

I am the

- ☐ applicant/inventor.  
☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

- ☒ attorney or agent of record. 37,782  
Registration number \_\_\_\_\_

- ☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34. \_\_\_\_\_

Signature

Mark Bourgeois

Typed or printed name

Telephone number

574-522-7996

Date

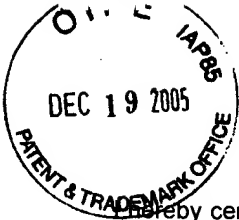
December 14, 2005

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

- ☒ \*Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Notice of Appeal, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450; on

December 14, 2005

Date

MARK Bourgeois

Typed or Printed Name of Person Mailing Paper or Fee

Signature

12/14/2005

Date of Signature

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial no.: 09/939,491  
Filing date: 08/24/2001  
For: Clematis Plant named 'Avalanche'  
Inventor: White  
Atty. Docket no.: PH41  
Group Art Unit: 1655  
Examiner: McCormick

### Notice of Appeal

This is in response to the final office action dated October 7, 2005.  
Applicant hereby submits the enclosed Notice of Appeal to the Board of Patent Appeals and Interferences.

Since a notice of appeal was previously submitted with a small entity fee of \$160 and the present small entity fee is \$250, the Commissioner is authorized to charge the difference between the previously paid fee and the current fee of \$90 to Deposit Account number 50-2485.

Respectfully submitted,

Mark P. Bourgeois  
Reg. No. 37,782

12/21/2005 MBIZUNES 00000036 502485 09939491  
01 FC:2401 250.00 DA